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March 8, 1995

Ms. Donna R. Searcy
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Re: *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-158, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-352 (February 8, 1995).

Dear Ms. Searcy:

Enclosed for filing on behalf of EXECUTONE Information Systems, Inc. please find the following:

- a. one original and nine copies of the Comments filed in response to the Notice of Inquiry in the above referenced matter;
- b. one original and one copy of this transmittal letter.

Please acknowledge receipt of this filing by stamping the enclosed copy of this letter and returning it in the stamped, self-addressed envelope provided. Thank you for your attention to this matter.

Sincerely,

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Amendment of Policies and Rules
Concerning Operator Service
Providers and Call Aggregators**

CC Docket No. 94-158

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**COMMENTS OF
EXECUTONE INFORMATION SYSTEMS, INC.**

RESPECTFULLY SUBMITTED,

**By: Joyce E. Johnson, Esq.
Regulatory Attorney
EXECUTONE Information Systems, Inc.
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Milford, CT 06460
(203) 882-6609**

March 8, 1995

SUMMARY

The Commission is considering modifying its regulatory treatment of inmate-only telephones. This modification appears to be in response to a number of consumer complaints regarding the unreasonably high prices charged by some providers of inmate-only telephones. To address these consumer complaints, the Commission should establish rate caps for the provision of this service and should not expand application of TOCSIA and the rules promulgated pursuant thereto. Application of TOCSIA would inhibit the ability of prison officials to police use of inmate-only telephones.

Prison officials continue to require restrictions on the use, access and availability of inmate-only telephones. The decisions of prison officials should be accorded substantial deference by the Commission because these officials have the requisite expertise to determine what restrictions must be placed on inmate-only telephone service based on the size and type of facility being administered. Restrictions are necessary to protect the public from abuse of the telephone by incarcerated criminals. Unsupervised, unmonitored access to the telephone network can facilitate further criminal acts and harassment of the public at large by prisoners incarcerated in correctional facilities. Additionally, the existing control exerted by prison officials has decreased losses experienced by the telephone industry due to toll fraud perpetrated by incarcerated criminals. Thus, any proposed change in regulation should not limit the ability of prison officials to maintain control over the use, access or availability of inmate only telephones.

The present regulatory framework has encouraged competition in the inmate-only telephone market. In response to both the prison officials' control requirements and competitive forces in the marketplace, companies have developed innovative products and services which

provide enhanced solutions for the needs of both the prison officials and the inmates utilizing the telephone services. Therefore, any change in existing regulation should be narrowly tailored to address any perceived misconduct by companies providing inmate-only telephone service.

It is not necessary to subject inmate only telephones to TOCSIA and the rules promulgated pursuant thereto to further the goals of Congress. Prisoners are not exposed to the deceptive practices of some market participants. Thus, prisoners cannot be tricked into using a competitors' service and thereby be overcharged by any individual provider. In addition, prisoners are not provided a choice of carriers because such choice would virtually eliminate the ability of prison officials to police use and abuse of telephone privileges. Expanding the coverage of TOCSIA will not necessarily eliminate the unreasonably high pricing practices of some carriers and will not provide any real benefit to the general public. Indeed, it may simply facilitate renewed criminal activity, toll fraud and harassing acts by inmates using the telephones.

To the extent the Commission deems regulatory oversight or controls of inmate-only telephone service necessary to eliminate overcharging by some providers, reasonable rate regulation, in the form of price caps, is the most effective alternative. Subjecting inmate-only telephones to statutory and regulatory provisions under TOCSIA would interfere with the prison officials ability to control use of inmate-only telephones.

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**Before the
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Washington, D.C. 20554**

In the Matter of

**Amendment of Policies and Rules
Concerning Operator Service
Providers and Call Aggregators**

CC Docket No. 94-158

**COMMENTS OF
EXECUTONE INFORMATION SYSTEMS, INC.**

EXECUTONE Information Systems, Inc. ("EXECUTONE" or the "Company") submits these Comments in response to the Federal Communication Commission's ("FCC" or "Commission") Notice of Proposed Rule Making ("NPRM") and Notice of Inquiry ("NOI"), FCC 94-352 (released February 8, 1995), in the above-referenced proceeding. The NOI portion of this docket seeks comment on whether the Commission should modify its current regulatory treatment of inmate-only telephones provided to correctional institutions. Comments are due on March 9, 1995 and Reply Comments are due on March 24, 1995.

EXECUTONE designs, develops, manufactures, markets, installs and supports Customer Premise Equipment ("CPE"), Private Branch Exchange Equipment ("PBX") and voice processing equipment, resells long-distance service and develops suitable systems that provide inmate-only calling and other services for use in correctional facilities. EXECUTONE's Corrections Division maintains daily contact with many officials empowered to secure inmate calling systems for use at correctional facilities in various regions throughout the United States.

In working with these prison officials, EXECUTONE continues to identify and develop innovative products and services that provide enhanced solutions for the needs of both the prison officials and the inmates utilizing the telephone services.

I. INTRODUCTION

In its notice, the FCC seeks comment on any changes it should make to the rules applicable to inmate-only telephones in correctional institutions in response to a number of informal consumer complaints.¹ The Commission specifically seeks comment on "the needs of inmate users; the resources and needs of correctional institutions in providing telephone service for inmates; and whether the goals of Section 226 and the public interest have been met through [its] current treatment of inmate-only telephones in correctional institutions."² In addition, the Commission solicits comment on whether the definition of "aggregator"³ should be expanded to apply to correctional institutions.⁴

¹The complaints received by the Commission center on the high prices charged by some members of the industry who provide services to inmate-only telephones. *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-158, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-352, ¶ C (9) (February 8, 1995).

²*Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-158, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-352, ¶ C (10) (February 8, 1995).

³ 47 U.S.C. § 226 (a)(2); 47 C.F.R. 64.708 (b).

⁴*Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-158, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-352, ¶ I (1) (February 8, 1995).

II. DISCUSSION

A. THE NEEDS OF CORRECTIONAL INSTITUTIONS.

The FCC has recognized that the provision of telephone service to inmates incarcerated in correctional institutions presents an exceptional set of circumstances.⁵ These circumstances exist due to the uniqueness of the prison environment.

In performing their duty to oversee and maintain a high level of control over the prison environment, prison officials have deemed it necessary to establish a number of limitations on the use of telephones by prisoners. The limitations include control over the use, availability and type of service to be provided to inmates. The industry has responded to the requirements of prison officials by developing software and hardware solutions that allow the least intrusive manner of control over telephone use by inmates. Many of the enhancements developed by the industry in response to prison official's required controls have also decreased the level of toll fraud experienced by the telephone industry.

1. PRISON OFFICIALS ESTABLISH LIMITATIONS ON THE USE OF TELEPHONES BY PRISONERS IN ORDER TO MAINTAIN NECESSARY CONTROL OVER THE INMATES' ACTIVITIES.

Correctional facilities are constructed in order to impede the ingress and egress of the inmates incarcerated therein. Prison officials must establish rules, regulations, disciplinary procedures for use within the correctional facility to maintain a healthy, orderly and safe environment for both the inmates and corrections officers within their facilities. They must also maintain inmates' schedules and provide educational and recreational programs for inmates that

⁵*Policies and Rules Concerning Operator Services Providers*, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2744, 2752 (April 15, 1991).

encourage rehabilitation. Use of the telephone can be an integral part of a prison official's planning.

The telephone provides the officials with the ability to reward good behavior or punish poor behavior of the inmate. It also provides the prison officials with a source of income⁶ which can be used to establish new and innovative educational and recreational activities for prisoners. These funds can also offset some of the financial burdens experienced by taxpayers due to the rise in the prison population. In fact, some prison officials use the commissions to purchase additional equipment that can monitor inmates' activities and track the location of corrections officers. Decisions regarding the allocation of commission income are left to the prison officials who have the requisite expertise in the corrections field.

In establishing any form of regulatory oversight of inmate-only telephone service, the FCC should accord prison officials' judgments on all matters related to the management of the prison and the use of telephones by inmates substantial deference. Thus, any rules adopted should not lessen the degree of control over the inmate population and over prison policies deemed necessary by the corrections officials charged with obtaining telephone service for inmates.

The courts have long recognized the need to exercise restraint in reviewing any issue pertaining to prison administration. "[I]t is well established that federal courts should not

⁶The income is derived by payment of commissions on inmate calls. These commissions aid prison officials in policing inmate activities and in providing additional, enhanced services to the prison community. This use of commissions lowers the tax burden experienced by all members of the community.

micromanage state prison systems." *Baker v. Holden*, 787 F. Supp. 1008, 1015 (D. Utah 1992).

The Courts have refrained from second guessing the actions of prison administrators because

[r]unning a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration.

Turner v. Safely, 482 U.S. 78, 84-85 (1987). The Commission, like the courts, should refrain from interfering with the judgments of prison officials in performing their duties to maintain control over the prison environment and providing a safe and healthy environment for prisoners and the correctional officials. Prison officials have the expertise to develop the necessary constraints on telephone use by prisoners. This expertise should not be second-guessed by the Commission in adopting any form of regulatory oversight of the provision of telephone service to inmates.

2. PRISON OFFICIALS MUST MAINTAIN CONTROL OVER AN INMATE'S USE OF TELEPHONE SERVICE TO LIMIT POSSIBLE FURTHER CRIMINAL ACTIVITY BY THE INMATE.

The telephone provides inmates with an opportunity and ability to maintain direct contact with family members and community ties. This contact may assist in the rehabilitative process. Yet uncontrolled use of telephone facilities may also facilitate further criminal activity by the prisoner. For example, access to a telephone can provide a prisoner with the opportunity and vehicle to harass witnesses, judges, police officers, prosecutors and victims of crimes. In addition, a prisoner can perpetrate further criminal acts by contacting outside co-conspirators. Indeed, some prisoners may perpetrate wireline fraud directly from the prison-provided

telephone, including theft of telephone service and fraudulent use of an illegally obtained credit card. To guard society against any further illegal activities, prison officials must maintain control over the use of telephone service by prisoners. Thus, in establishing rules for telephone use, prison officials must balance the rehabilitative influence of maintained contact with the outside world against the possibility and cost of continued criminal activity by the prisoner.

Control of the prison environment cannot be achieved by the mere construction of barriers such as walls, fences, locks, barbed wire, bars, video monitoring equipment, etc.; it must also include oversight of any contacts prisoners may have with the outside world. Prison officials must determine when and how these contacts will be provided in a manner that maintains the necessary controls yet fosters the rehabilitative influences of outside contacts. These contacts include telephone contacts. Control of a prisoner's use of the telephone can be performed with the minimum of intrusive intervention and call monitoring if specific safeguards are built into the telephone system. These mechanized safeguards provide prison officials with the necessary degree of control over telephone contacts made between the confined inmate and the outside world without jeopardizing the ability of the inmate to communicate effectively with responsible members of society.

3. THE RESTRICTIONS PLACED ON INMATE-ONLY TELEPHONES REQUIRED BY PRISON OFFICIALS RESPONSIBLE FOR OBTAINING INMATE TELEPHONE SYSTEMS.

Access to and use of a telephone by an incarcerated criminal is a privilege which prison officials can use as a reward or punishment mechanism. For instance, if the inmate does not abuse the privilege of telephone access and maintains the requisite behavior, he can be provided

unlimited, unmonitored use of the telephone. On the other hand, if the prisoner abuses the telephone privilege by perpetrating criminal acts via the telephone, then telephone privileges can be revoked.

Many correctional officials limit the type of calls that can be placed from inmate-only telephones. The limitations include but may not be limited to: a requirement that all calls be placed on an 0+ collect basis;⁷ restrictions on the time of day an inmate can place a call;⁸ limits on the duration of the call;⁹ required use of a Personal Identification Number ("PIN") by the inmate; restrictions on the numbers that may be called by specific inmates;¹⁰ restrictions on access to specified telephone numbers by all inmates; and requirements providing free access to specified numbers.¹¹ In addition, corrections officials in many cases require that inmate telephone systems provide recording and monitoring capabilities on a selective basis; an ability

⁷A requirement that an inmate place a call on an 0+ basis ensures that the party receiving and paying for the call desires to speak with the inmate placing the call. It also eliminates the need for an inmate to use personal funds to place a call, possible toll fraud by theft of calling card numbers of other inmates or members of society (if the number was taken prior to incarceration), and the necessary provision of a physical debit/calling card that could be used to develop a weapon. The "... collect call system used in prisons allow[s] inmates to make unlimited calls within the disciplinary restrictions of the penal institution." By contrast, conversion to a direct dial inmate telephone system limited the availability of telephone service to many inmates. *Washington v. Reno*, 35 F.3d 1093, 1095 (1994).

⁸This limitation ensures that inmates do not place harassing calls at unacceptable times during the course of the day and night.

⁹ The equipment must be capable of terminating the call automatically once the allotted time is expired to assure access to the telephone by all inmates.

¹⁰Prison officials generally require blocking of access to emergency services, police stations, judges, prosecutors, witnesses, jurors and other parties involved in the criminal justice system to avoid harassment by the inmate.

¹¹Free access is generally provided so that inmates can contact public defenders.

to store call information for later use by correctional officials; an ability to store call detail information; and to generate specialized reports that can aid officials in identifying and preventing criminal activities of inmates.

4. TELEPHONE COMPANIES HAVE RESPONDED TO THE NEEDS OF PRISON OFFICIALS BY DEVELOPING SOFTWARE AND HARDWARE SOLUTIONS THAT PERFORM THE LIMITATIONS REQUIRED IN THE LEAST INTRUSIVE MANNER POSSIBLE.

To respond to the needs of prison officials, the Company manufactures, supplies and maintains specialized inmate calling systems that can be configured to address the individual concerns of prison officials overseeing various types of correctional facilities. Each prison generally requires different controls on the use of telephone services based on the type and size of the facility involved. The Company evaluates existing calling patterns and reviews the requirements enumerated by the prison official(s) in the contract and constructs a system configured to meet these needs.

The Company has developed systems with sophisticated functionalities which include: automated collect-only calling capability; time of day and duration restrictions; personal identification numbers ("PINS"); negative and positive called number screening to restrict access to approved numbers only; call recording and monitoring capability on a selective basis; call storage capability; call detail and traffic analysis; three way call detection capability and debit of charges directly from inmate commissary accounts. In addition, the Company manufactures several non-telephone functionalities that can be integrated into the inmate calling system to provide prison officials with additional benefits. These include an integrated infrared locator system, video security equipment, intercom systems, mass announcing equipment, an emergency

outcall notification system, criminal activity tracking system, video imaging and inmate tracking systems, integrated voice response system and electronic security locks. Each of these, or any combination thereof, can provide the flexibility necessary to establish a telephone system that addresses the individual concerns of the officials running the correctional facility. Prison officials can maintain the necessary control over inmate calling and prevent illegal activities without monitoring each and every telephone number dialed and each conversation held.

Upon completing review of the inmate's calling patterns and the specific contractual limitations enumerated by the corrections officials charged with obtaining the telephone equipment, the Company configures an ITS that provides all of the necessary functionalities. Once configured, installed and tested, the Company administers the ITS and uses its industry knowledge and experience to improve the products and services offered to prison officials. Continued system administration functions also assist the Company in identifying new products and services that will increase the functionality of the installed system. It also ensures that the quality of service provided to the inmate community improves over time as new innovations are introduced into the telephone equipment. Additionally, any equipment enhancements assist the Company in reducing the cost of providing service. These savings are then passed through to the prison officials procuring the telephone system, reducing the tax burden of the community. Continued and increased competition in the provision of inmate-only telephone systems will result in further enhancements to these systems.

5. THE PRESENT REGULATORY TREATMENT OF INMATE-ONLY TELEPHONE SERVICES HAS ENCOURAGED THE DEVELOPMENT OF INNOVATIVE SYSTEMS THAT HAVE DIMINISHED THE LOSSES EXPERIENCED BY THE TELEPHONE INDUSTRY DUE TO TOLL FRAUD.

Current restrictions placed on inmate phone calls have significantly diminished the ability of inmates to perpetrate toll fraud. Prison officials obtain service from a single source, which ensures that the provider knows each and every call is being placed by an inmate. This allows the provider to take the necessary fraud precautions on the calls originated at the facility. In addition, the provider can install specialized fraud control equipment that can detect and prevent fraud.

By installing fraud control equipment, the Company can analyze the traffic patterns and other information contained in specialized reports, coordinate the use of PINs to identify the caller, provide number screening and blocking to limit access to known fraud perpetrators, establish billing and collection services to ensure payment for the calls placed, identify suspicious customers and review these customers' credit rating, place limitations on the duration of calls and brand the call so that the party receiving the call knows it originates at a prison facility. All of these functionalities aid in the identification and elimination of toll fraud. In addition, the continued administration of the installed equipment by telecommunications providers with expertise in the industry will also encourage the development of new and innovative technologies which can eliminate identified forms of toll fraud.

B. THE NEEDS OF INMATE TELEPHONE USERS.

It is in the inmate's interest to obtain continuous, unsupervised and unmonitored access to the telephone. The telephone provides an inmate with the opportunity to maintain family and

social ties with responsible members of society which can aid in the rehabilitation of the inmate. When providing an inmate access to the telephone, however, prison officials must be provided the ability to maintain the necessary controls, discussed above, to limit possible criminal activity by the inmate.

Many of the mechanized enhancements discussed *supra* provide an unobtrusive means for prison officials to maintain the desired control over inmate calling while diminishing their need to monitor individual prisoners use of telephone facilities. For example, reports can be used to identify telephone numbers that are receiving an inordinate amount of telephone calls by a large number of inmates, possibly facilitating drug related activities. Because it is in the prisoner's interests to be provided unsupervised-unmonitored use of the telephone and because this kind of access has been made more available through industry innovations, any change in regulatory oversight should be narrowly tailored to address the problem to be redressed.

The Commission is presently considering rules that will require the implementation of Billed Party Preference ("BPP") for all 0+ calls, including those placed by inmates in correctional facilities.¹² The Commission estimates that BPP, if ordered, could be available within two and a half years of the Commission's mandate.¹³

BPP allows either the calling or the called party to select the carrier that will handle the call. In proposing rules for the implementation of BPP, the Commission states there are two

¹²*Billed Party Preference for 0+ InterLATA Calls*, CC Docket No. 92-77, Further Notice of Proposed Rule Making, FCC 94-117, 9 FCC Rcd 3320 (June 6, 1994).

¹³*Billed Party Preference for 0+ InterLATA Calls*, CC Docket No. 92-77, Further Notice of Proposed Rule Making, FCC 94-117, 9 FCC Rcd 3334, 3335 (June 6, 1994).

principal benefits afforded customers by its implementation: first, BPP would redirect Operator Service Providers ("OSPs") OSPs' competitive efforts away from aggregators and toward end users; and second, BPP would eliminate 0+ commissions, reducing the cost of providing operator services.¹⁴

A significant number of parties that participated in the Rulemaking proceeding, and a number of parties filing *ex parte* comments, have requested an exemption from BPP for prison phone service.¹⁵ The parties have suggested that the Commission can address any concerns over unreasonably high rates charged by some industry participants by establishing rate ceilings for inmate calling services.¹⁶ The Commission stated, at that time, that the current record was inadequate for it to make a reasoned decision of the requested exemptions.¹⁷

The Commission should rely on the substantial record provided in the context of the BPP proceeding to establish any rules regarding BPP implementation. That record provides significant data supporting the position that the consumer concerns with the provision of inmate-only telephones can be redressed by establishing an industry-wide rate cap that will avoid costly new technologies and provide prison officials with the ability to prevent fraud, harassing phone calls or other criminal or abusive use of prison phones. Establishment of a rate ceiling will

¹⁴*Billed Party Preference for 0+ InterLATA Calls*, CC Docket No. 92-77, Further Notice of Proposed Rule Making, FCC 94-117, 9 FCC Rcd 3323 (June 6, 1994).

¹⁵*Billed Party Preference for 0+ InterLATA Calls*, CC Docket No. 92-77, Further Notice of Proposed Rule Making, FCC 94-117, 9 FCC Rcd 3328, 3329 (June 6, 1994).

¹⁶*Billed Party Preference for 0+ InterLATA Calls*, CC Docket No. 92-77, Further Notice of Proposed Rule Making, FCC 94-117, 9 FCC Rcd 3329 (June 6, 1994).

¹⁷*Billed Party Preference for 0+ InterLATA Calls*, CC Docket No. 92-77, Further Notice of Proposed Rule Making, FCC 94-117, 9 FCC Rcd 3330 (June 6, 1994).

ensure continued competition for provision of inmate-only phones while protecting the public from the overcharging of certain industry participants.

C. THE GOALS OF § 226 AND THE PUBLIC INTEREST HAVE BEEN ADEQUATELY ADDRESSED BY EXISTING REGULATION. ANY REGULATORY REFORM SHOULD BE LIMITED TO ADDRESSING THE CONCERNS EXPRESSED BY THE PUBLIC IN COMPLAINTS FILED WITH THE COMMISSION.

The Commission seeks comments on whether the current regulatory treatment of inmate-only telephones meets the goals of the Telephone Operator Consumer Services Improvement Act of 1990¹⁸ ("TOCSIA" or the "Act").¹⁹ Congress enacted the Act "to protect consumers who make interstate operator services calls from pay telephones, hotels and other public locations against unreasonably high rates and anticompetitive practices."²⁰ The Act should "ensure that consumers are protected from unfair and deceptive practices relating to their use of operator services to place interstate long distance calls, and second, to ensure that consumers have the opportunity to make informed choices in making such calls."²¹

To develop a regulatory framework consistent with the goals enumerated by Congress, the Commission has adopted rules that establish standards and policies for the provision of

¹⁸47 U.S.C. § 226.

¹⁹*Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket 94-158, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-352, ¶ C (10) (February 8, 1995).

²⁰S. Rep. No. 439, 101st Cong., 2d Sess. 1 (1990); *see also*, H.R. Rep. No. 213, 101st Cong., 1st Sess. 2 (1989) ("The purpose of [the Act] is to protect telephone consumers against unfair prices and practices of some operator service providers (OSPs), yet allow the legitimate companies in the industry the opportunity to compete in the market.")

²¹*Policies and Rules Concerning Operator Services Providers*, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2744, 2747, ¶ 4 (April 15, 1991).

operator services²² as directed by Congress.²³ In addition, the Commission continues monitoring the OSP market by tracking OSP complaints, reviewing rates and various costs of providing operator service and monitoring innovations in the provision of operator service and requirements of TOCSIA.²⁴ The Commission specifically excluded inmate-only telephones from regulation under the Act and rules.²⁵

Inmate-only telephones provide a conduit by which an incarcerated criminal can obtain access to the public at large. To eliminate possible abuse of this access, prison officials have established specific restrictions and limitations on the availability and use of prison inmate phones. Unlike pay telephones and phones provided for use by the transient public, access to inmate-only telephones is restricted to the inmates incarcerated at the correctional institution. Inmate users cannot be tricked into using a competitors' services and thereby be overcharged by any individual provider. Inmates experience a limited exposure to the continuous advertising which is, in some cases, structured to deceive a consumer. By continued use of the inmate-only telephone system, the inmate will become familiar with the practices and charges of the provider of service virtually eliminating any possible deceptions inherent in provision of public pay telephones and telephone services used by transient consumers. This substantially eliminates the

²²*Policies and Rules Concerning Operator Services Providers*, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2744, (April 15, 1991).

²³47 U.S.C. § 226 (d), (h)(3).

²⁴ See *Policies and Rules Concerning Operator Service Providers*, CC Docket 90-313, Phase II, Order, 6 FCC Rcd 2314 (Com. Car. Bur. 1991); *Public Notice*, DA 91-1005 (Com. Car. Bur. 1991).

²⁵*Policies and Rules Concerning Operator Services Providers*, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2744, 2752 (April 15, 1991).

first concern expressed by Congress in the Act, protecting consumers from unfair and deceptive practices of some operator service providers. The prisoner cannot go to an alternate location to use the service of another provider, nor should the Commission establish standards that would mandate this form of access. Without continuing the provision of inmate-only telephone service by a single source provider, prison officials would lose the ability to control the use, and abuse, of the telephone system.

The second concern expressed by Congress is providing consumers an opportunity to make informed choices in making operator assisted calls. As discussed above, providing inmates choice of carriers will limit or possibly eliminate the ability of prison officials to maintain unobtrusive control over use of telephone service by inmates.²⁶ These controls are necessary to limit, abuse, fraud or facilitation of criminal activity perpetrated by the incarcerated criminal.

Additionally, the Congressional purpose in enacting TOCSIA was to protect consumers from unreasonably high rates and anticompetitive practices.²⁷ Thus, the Act assumes that the competitive provision of operator services, like those provided to inmate-only telephones, is in the public interest and is consistent with the goals of the Act. Existing regulation has encouraged competition in the inmate-only market. This competition is not merely competition on the basis of price; it has inspired the development of systems with sophisticated functionalities that aid prison officials in performing control functions while limiting the

²⁶ See *supra*, § A.

²⁷S. Rep. No. 439, 101st Cong., 2d Sess. 1 (1990); *see also*, H.R. Rep. No. 213, 101st Cong., 1st Sess. 2 (1989) ("The purpose of [the Act] is to protect telephone consumers against unfair prices and practices of some operator service providers (OSPs), yet allow the legitimate companies in the industry the opportunity to compete in the market.")

formerly necessary monitoring of all phases of the the inmate's communication, from dialing the number to holding a conversation. In response to these increased competitive forces, many companies have developed and continue to develop innovative enhancements to existing systems which assist prison officials in controlling use of prison phones without supervising every facet of the call.

To further the goals of the Act, the Commission should establish rules that limit consumer exposure to unreasonably high rates by establishing rate caps. It should not subject inmate-only phones to the statutory and regulatory constraints that the Commission and Congress have determined are necessary to police publicly-placed telephones. Expanding the coverage of TOCSIA will not necessarily eliminate the unreasonably high pricing practices of some carriers and will not provide any real benefit to the general public. Indeed, it may facilitate renewed criminal activity, toll fraud and harassing acts by inmates using the telephones.

D. THE FCC SHOULD NOT EXPAND THE DEFINITION OF THE TERM "AGGREGATOR"²⁸ TO APPLY TO CORRECTIONAL INSTITUTIONS.

In *Policies and Rules Concerning Operator Services Providers*, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2744, 2752 (April 15, 1991), the FCC excluded correctional institutions' provision of inmate-only service from the definition of the term "aggregator" for application of the rules promulgated pursuant to the TOCSIA.²⁹ The Commission stated "[w]e

²⁸ See, 47 U.S.C. § 226 (a)(2); 47 C.F.R. § 64.708 (b).

²⁹ 47 U.S.C. § 226.

are persuaded that the provision of such phones to inmates presents an exceptional set of circumstances that warrants their exclusion from the regulation being considered herein."³⁰

The exceptional circumstances surrounding the provision of inmate-only telephone systems still exist. Access to inmate-only telephones continues to be limited to the prisoners incarcerated at the correctional institution. Prison officials continue to require certain limitations on access to the switched public network to avoid further criminal activity and to limit toll fraud. Prison authorities must remain able to configure telephone systems that address the concerns of the particular correctional facility.

Some of the Congressional statutory mandates are at odds with the requirements of prison officials. For example, the Act requires aggregators to allow a consumer to use "800" and "950" access code numbers to obtain access to the consumer's preferred provider of operator services. Ability to use dial-around access code numbers would hinder the ability of the prison officials to limit toll fraud and access to certain telephone numbers.

Once the inmate accesses the public switched network, toll fraud prevention measures and blocking would have to be performed within the network. Although there are technological improvements that can provide network policing of inmate telephone calls, the costs of requiring these improvements are avoidable costs. The Commission can avoid these costs by continuing the exception established when implementing rules pursuant to TOCSIA. Indeed, avoiding the costs of requiring network improvements to police calls placed by inmates also ensures that consumers are provided service at the lowest possible cost.

³⁰*Policies and Rules Concerning Operator Services Providers*, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2752.

In addition to the difficulties arising from the statutory mandates of TOCSIA, which cannot be waived by the Commission, there are also conflicts between the Commission's rules and the required control of prison officials. The Commission requires immediate connection to emergency services. 47 C.F.R. § 64.707. Prison officials, on the other hand, deem it necessary to block all access to emergency services to eliminate abuse of the service by inmates.³¹

Finally, many of these protections established by TOCSIA and its related regulations do not apply in prison environment. There is no need to post the identity of the Company providing the service since service is provided by a single source who can ensure that the safeguards required by prison officials are implemented and enforced. An inmate need merely ask to ascertain the identity of the provider of service; this is also true of the called party. It is also unnecessary to brand the call, at least to the inmate who use the telephones, because the inmate should know the identity of the company providing the services. It is also unnecessary to provide an 800 number to reach customer service representatives or repair technicians. If the telephone is not operating properly, it will be quickly identified by prison officials or the inmates due to the nature of the prison environment. Thus, expansion of the definition of aggregator to include inmate-only providers will not provide the consumer protections envisioned by Congress in enacting TOCSIA.

³¹If the Commission enacts rules requiring access to 411 and other N11 services from aggregator locations and the Commission decides to expand the definition of aggregator to include inmate-only telephones, additional safeguards would have to be built into the network, increasing consumer costs. When a consumer dials 411 to obtain a telephone number, many LECs provide a service that will automatically dial the requested number for a fee. Thus, some technological safeguards would have to be implemented to ensure that inmates cannot use this service to harass individuals, to perpetrate criminal acts or to obtain telephone access to telephone numbers blocked by prison officials.

E. PROPOSED REGULATORY REFORM.

In developing regulation over inmate telephone services, the Commission must address the concerns both of the parties using the system and of the officials who administer the prisoners' access to the service. To address the concerns expressed by the public in complaints received by the Commission, it is not necessary to subject inmate-only telephone service to all or most of the regulatory safeguards established by TOCSIA and the rules promulgated pursuant thereto. Based on the Commission's description in the NOI of the complaints received, it appears that users of inmate-only telephones are concerned with the exorbitant prices charged by some members of the industry.³² These complaints can be eliminated by the establishment of rate caps for prison telephones.

Branding, posting and other rules and regulations requiring provision of consumer information are unnecessary in the prison environment. Prisoners do not and should not have the unlimited, uncontrolled access to telephone service of a large number of competitors that is appropriate for the unincarcerated consumer. Such unlimited, uncontrolled access will diminish the control exerted by prison officials and would facilitate possible further criminal acts by the inmate community.

III. CONCLUSION

If the FCC determines that it is necessary to change its present treatment of entities that provide interstate telecommunications services to prisons and other correctional facilities, it

³²*Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-158, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-352, ¶ C (9) (February 8, 1995).